

From: Nandi, Romell [Nandi.Romell@epa.gov]
Sent: 10/15/2019 8:16:38 PM
To: Kaiser, Russell [Kaiser.Russell@epa.gov]
CC: Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; McDavit, Michael W. [Mcdavit.Michael@epa.gov]
Subject: RE: Follow-up on ESA counterpart pre-brief today - PPB submission

Brian, Mindy, and Russ:

Before you see what I am submitting, I want to ask this since I am not really up on the background of this request. I have included the NEP grant program in here because from Russ's email it appears that John is saying to cast a wide net on

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I have also included Five Star/Urban Waters Restoration Grants because the RFP for those grants specifically references ESA (and states and tribes are eligible for those grants). PDJB helped with the write-up for that one.

In the chart, please put both of these under "Funding-related actions":

1. National Estuary Program (320) grants program (OWOW)
2. National Fish and Wildlife Foundation's Five Star/Urban Waters Restoration Grants (OWOW)

Descriptions:

National Estuary Program (NEP) Grants

- Program description: Grants provided to NEPs to implement Comprehensive Conservation and Management Plans (CCMPs) that protect and restore water quality and ecological integrity of estuaries of national significance.
- Federal action: Funds provided to NEPs annually and CCMP revisions and updates approved by EPA periodically.
- Current position on ESA consultation: ESA consultation is not required under CWA Section 320. However, initial CCMPs (not revisions or updates) were sent to FWS for ESA Section 7 consultation. This was done since FWS is often involved in CCMP development as a partner/member of the NEP management conference.

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National Fish and Wildlife Foundation Five Star and Urban Waters Restoration Grants

- Program description: EPA contributes funding to the National Fish and Wildlife Foundation to administer the Five Star and Urban Waters Restoration grant program. The program seeks to develop community capacity to sustain local natural resources for future generations by providing modest financial assistance to diverse local partnerships focused on improving water quality, watersheds and the species and habitats they support. Projects include a variety of ecological improvements along with targeted community outreach, education and stewardship.
- Federal action: Provide funding to NFWF so they can administer the grant program. Funding is integrated into a multi-agency/public-private partnership consortium that NFWF administers.
- Current position on ESA consultation: NFWF manages this program and their most recent RFP indicates the following:
 - Projects selected may be subject to requirements under the National Environmental Policy Act, Endangered Species Act (state and federal), and National Historic Preservation Act. Documentation of compliance with these regulations must be approved prior to initiating activities that disturb or alter habitat or other features of the project site(s). Applicants should budget time and resources to obtain the needed approvals. As may be applicable, successful applicants may be required to comply with additional Federal, state or local requirements and obtain all necessary permits and clearances.

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Romell
566-1203

From: Kaiser, Russell <Kaiser.Russell@epa.gov>

Sent: Tuesday, October 15, 2019 7:31 AM

To: Nandi, Romell <Nandi.Romell@epa.gov>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>

Subject: FW: Follow-up on ESA counterpart pre-brief today. High PRIORITY. NEED Input by 10 AM Tomorrow Morning.

Importance: High

Romell – with Bob out, I will need you to take the lead for your branch. Thanks

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C: Ex. 6 Personal Privacy (PP)

From: Kaiser, Russell

Sent: Tuesday, October 15, 2019 7:28 AM

To: McDavit, Michael W. <McDavit.Michael@epa.gov>; Benson, Robert <Benson.Robert@epa.gov>; Robiou, Grace <Robiou.Grace@epa.gov>

Cc: Frazer, Brian <Frazer.Brian@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Subject: FW: Follow-up on ESA counterpart pre-brief today. High PRIORITY. NEED Input by 10 AM Tomorrow Morning.

Importance: High

All: Last week, OST briefed the ODs on the ESA counterpart reg. Although I was not present at the meeting. John did provide additional direction for OWOW. Per John, he would like us to ensure that we **identify all OWOW programs and identify them in the "Universe of OW Programs"** table, following. We are to focus on OWCD programs, including for example of all our grant and other programs. Right now we account for 404 Assumption, UNDS, 404 Reg and Ocean Dumping. **I will need your input by tomorrow morning at 10AM so that I can take all of our additions and add them to the one drive file. The plan is to brief OW next week on the proposal.** Thanks much - Russ

Universe of OW Programs:

Federal rulemakings	Funding-related actions	EPA state/tribal actions that are recurring in nature	EPA one-time approval of state/tribal program
<i>National scope</i> <ul style="list-style-type: none">Cooling water intakes (316b) (OST)Effluent-based guidelines (OST)*, **Uniform national discharge standards (OWOW) <i>State/localized scope</i> <ul style="list-style-type: none">Primacy approvals (OGWDW)*, **Aquifer exemptions (OGWDW)**Ocean dumpsite designations (OWOW)	<ul style="list-style-type: none">Section 106 grants program (OWM)*National Aquatic Resource Surveys (EPA funded contractor sampling only) (OWOW)Non-point source (319) grants program (OWOW)	<ul style="list-style-type: none">Water quality standards (OST)Regionally-issued federal individual and general permits (OWM)National general permits (OWM)Ocean dumping permits (OWOW)TMDLs (OWOW)***Underground injection control permits (OGWDW)	<ul style="list-style-type: none">CWA 404 program assumption (OWOW)*NPDES program approval (OWM)*Underground injection control permits (OGWDW)

**EPA's position is we do not consult because we lack discretion to consult*

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***Current program practice is to make 'no effect' determinations (hence, no consultation is required).*

**** EPA's position is we do not consult because we lack discretion to consult and alternatively, TMDLs do not have effects independent from WQS (for which we have already consulted).*

Note that EPA does take the position that the agency has no discretion to consult on certain WQS approvals (e.g. antidegradation and human health criteria).

In addition to the table inserts above, we also will need to create a dialog for each program insert. For each program that is newly listed, I will need you to prepare a write-up that follows the structure below.

Non-Point Source Grants

- Program description: federal grants and framework for NPS pollution control
- Federal action: annual grant issuance, annual funding of satisfactory progress by state, approval of 5-year NPS management plan

- Current position on ESA consultation: EPA's long-standing position is that ESA does not apply to grant awards to states, as states take many actions with their federal assistance, and the nexus between federal grant award and state action potentially affecting T&E species is too attenuated to trigger ESA obligations.

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CWA 404 Assumption

- Program description: CWA Section 404 requires a permit be issued before dredged or fill material can be discharged into the waters of the US. 404(g) of the CWA enables tribes and states to assume the administration of the program for certain waters. Assumption – which is different from delegation – means that a state or a tribe assumes the authority to issue state- or tribe-issued permits and the Corps suspends permitting. EPA approves state and tribal requests to assume administration of the program which are consistent with the Act and implementing regulations and has oversight responsibilities.
- Federal action: Approval or denial of a state or tribal request to assume the CWA section 404 program.
- Current position on ESA consultation:
- EPA approval of CWA 404 programs is a non-discretionary action and thus Section 7 consultation is not triggered.
- EPA has oversight responsibilities of state/tribally issued permits under approved 404 programs. EPA's long-standing position is that issuance of permits by a state/tribe authorized to administer CWA Section 404 is not a federal agency action and does not trigger Section 7 consultation.

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Uniform National Discharge Standards Rulemaking

- Program description: The Uniform National Discharge Standards (UNDS) program establishes national discharge standards for vessels of the Armed Forces that operate nationwide in coastal and inland waters. These national standards will reduce the environmental impacts associated with vessel discharges, stimulate the development of improved pollution control devices and advance the development of environmentally sound military vessels. The national standards are being developed in three separate rulemakings.
- Federal action: Three Separate Rulemakings
- Current position on ESA consultation: Completed Batch One Rule (Informal Consultation); Submitted the Batch Two BE to the Services, waiting for the BO (Formal Consultation); work will begin on Batch Three in 2020.

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Ocean Dumping Permits

- Program description: Under the MPRSA, EPA is responsible for establishing criteria for reviewing and evaluating permit applications. EPA is responsible for issuing ocean dumping permits for materials other than dredged material. In the case of dredged material, the U.S. Army Corps of Engineers (USACE) is responsible for issuing ocean dumping permits, using EPA's environmental criteria. Permits for ocean dumping of dredged material are subject to EPA review and written concurrence. EPA is also responsible for designating (in the FR)

and managing ocean disposal sites for all types of materials. EPA and USACE together develop site management and monitoring plans (SMMPs) for each designated ocean dredged material disposal site. EPA's Ocean Dumping Management Program, often in coordination with USACE, conducts oceanographic surveys at these ocean disposal sites to evaluate environmental conditions at the site and to determine what management actions may be needed.

- Federal action: Issuance of ocean dumping permits; designation of ocean dumpsites
- Current position on ESA consultation: n/a

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C: Ex. 6 Personal Privacy (PP)

From: Soo-Hoo, Mimi <Soo-Hoo.Mimi@epa.gov>

Sent: Thursday, October 10, 2019 5:24 PM

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Cc: Goodin, John <Goodin.John@epa.gov>; Anderson, Danielle <Anderson.Danielle@epa.gov>

Subject: Follow-up on ESA counterpart pre-brief today

Hi everyone,

Thank you for your participation this afternoon in briefing OW Office Directors on a potential ESA counterpart rule. I'm following up on John Goodin's request to ensure that all OWOW programs are reflected in the "Universe of OW Programs" table, located on page 1 of the briefing materials (screenshot below).

Our plan is to distribute a new draft briefing paper for review (in preparation for our briefing with OW scheduled for October 30th) on Thursday of next week (October 17th). To the extent that you'd like to add to the table before next Thursday, please feel free to do so using the OneDrive link that we used to develop the OD pre-brief materials. I will make sure any edits you make to the table before October 17th will make their way into the new draft that we'll distribute for program office review. If you have any questions, feel free to reach out to me directly.

Thanks again for all of your help,
Mimi

Universe of OW Programs:

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**EPA's position is we do not consult because we lack discretion to consult*

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